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December 22, 2014

Mrs. Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street  
Montpelier, Vermont 05620

Re: Docket 7970-VGS System Expansion Phase I

Dear Mrs. Hudson:

Attached are an original and seven copies of the Department's Motion for Relief Pursuant to Rule 60 (b) for filing in this matter. Please let me know if you have any questions.

Sincerely,



Louise C. Porter  
Special Counsel

cc: Service List



**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Docket No. 7970

Petition of Vermont Gas Systems, Inc. for a certificate of public good, pursuant to 30 V.S.A. § 248, authorizing the construction of the “Addison Natural Gas Project” consisting of approximately 43 miles of new natural gas transmission pipeline in Chittenden and Addison Counties, approximately 5 miles of new distribution mainlines in Addison County, together with three new gate stations in Williston, New Haven and Middlebury, Vermont

**THE VERMONT DEPARTMENT OF PUBLIC SERVICE  
MOTION FOR RELIEF PURSUANT TO RULE 60(b)**

The Vermont Department of Public Service (Department) hereby moves the Vermont Public Service Board (Board) for relief from the Board’s Order issued on December 23, 2013, in this proceeding (December 23 Order). Specifically, the Department respectfully requests that the Board establish a process whereby the Board can evaluate and address the revised cost estimates for the Addison Natural Gas Project (Phase I Project) reported by Vermont Gas Systems, Inc. (Vermont Gas) on December 19, 2014. The Department makes this request pursuant to Rule 60(b) of the Vermont Rules of Civil Procedure (VRCP).

Facts

On December 23, 2013, the Board issued its final order in the above-referenced proceeding and issued Vermont Gas a certificate of public good (CPG) for the Phase I Project. The cost of the Phase I Project contemplated in the December 23 Order was \$86.6 million. That order is presently on appeal before the Vermont Supreme Court in Docket No. 2014-135. The primary issue on appeal is whether the December 23 Order is a final judgment.

On July 2, 2014, Vermont Gas disclosed a net increase of \$35 million in the project’s cost, for a revised cost estimate of approximately \$121 million. In response to this revised cost estimate, the Board sought and was granted a remand from the Vermont Supreme Court to allow the Board to determine whether to reopen the proceedings in light of the new cost information, and to address that information if the Board determined that the proceedings should be reopened.

During the remand proceedings, the Board took testimony and held a technical hearing on the new cost information. The Board evaluated the new cost information pursuant to Rule 60(b)(2). The Board's analysis focused on whether the effect of the new cost information is of a nature that is so material and controlling as to probably change the outcome reached in the December 23 Order. *Order Re: Rule 60(b) Reconsideration*, Order of 10/10/14 at 14 (October 10 Order). After evaluating the evidence adduced during the remand proceeding, the Board concluded that it could discern no grounds for reopening the December 23 Order pursuant to Rule 60(b)(2) due to the new cost information announced by Vermont Gas on July 2.

The case was thereafter returned to the Vermont Supreme Court, which held oral argument on the pending appeal on November 18, 2014. The Vermont Supreme Court has not yet issued a decision in this proceeding.

On December 19, 2014, Vermont Gas made a filing with the Board, in which it provided a further revision to the estimated costs associated with the Phase I Project. Vermont Gas now reports that the Phase I Project is estimated to cost \$154 million, comprised of a \$138 million capital cost estimate plus a \$16 million contingency. This total project budget is approximately 78 percent more than the project budget when the CPG was granted. Vermont Gas stated that it is currently in the process of developing supporting analysis and testimony to explain the budget process that led to the current budget number, along with analysis supporting the continued substantial economic and environmental benefits of the Phase I Project. Vermont Gas plans to file this supporting information in early 2015.

#### Legal Standard

In Vermont, the process for reconsidering a final order is governed by Vermont Rule of Civil Procedure 60, which applies in Board proceedings pursuant to Board Rule 2.221. In pertinent part, Rule 60(b) provides that:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation,

or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Rule 60(b) also provides for the following time limitation for motions seeking relief from a final judgment: "The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken."

In situations where a utility reports an increase in the estimated capital costs of a project, the Board has employed Rule 60(b)(2) as the relevant section for analyzing the revised cost estimates. In its October 10 Order in this proceeding, the Board stated the following:

Of particular relevance to this remand proceeding is Rule 60(b)(2), which we have previously construed to permit relief from a final order when new evidence is discovered that is of "such a material and controlling nature as will probably change the outcome." We find that subsection (b)(2) provides the appropriate standard for our review because the catalyst for any decision to reopen the December 23rd Order would be newly discovered evidence — the revised cost estimate reported by VGS on July 2, 2014. We observe that our decision to proceed under Rule 60(b)(2) is consistent with our precedent relating to the construction of the *Northwest Reliability Project*. October 10 Order at 7 (internal footnotes omitted).

#### Motion

Pursuant to Rule 60(b), the Department respectfully requests that the Board establish a process whereby the Board can evaluate and address the revised cost estimates for the Phase I Project reported by Vermont Gas on December 19, 2014. From the information provided thus far by Vermont Gas, the revisions to the Phase I Project's cost estimates are of a similar magnitude to those announced on July 2, 2014. The Department understands that Vermont Gas has committed to providing additional explanation for the revised cost estimates in early 2015. However, presuming that December 23, 2013, is the date of the final judgment in this proceeding (an issue

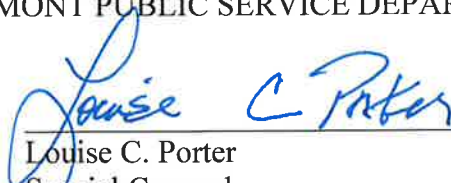
currently on appeal before the Vermont Supreme Court), the time period in which to seek relief from that final judgment pursuant to Rule 60(b)(2) is set to expire. Accordingly, the Department makes this motion for relief from a final judgment pursuant to Rule 60(b), in order to preserve the Board's and the parties' ability to carry out a review similar to the one carried out by the Board in its October 10 Order, should the Board decide that it is appropriate to do so.

The Board has currently established a date of January 8, 2015, for parties to submit responses to Vermont Gas's December 19 filing. Having filed this Rule 60(b) motion within the one-year timeframe mandated by the rule, the Department will provide additional comments on January 8. With this motion, the Department is not indicating its desire to proceed under Rule 60(b), but simply preserving the possibility to do so. At the time comments are due, the Department will provide further recommendations to the Board on next steps. The Department's recommendations will consider different procedural vehicles and ongoing processes before the Board for evaluating the new cost information—*e.g.*, pursuant to Rule 60(b) and/or pursuant to Board Rule 5.408.

Dated at Montpelier, Vermont this 22<sup>nd</sup> day of December, 2014.

VERMONT PUBLIC SERVICE DEPARTMENT

By:

  
\_\_\_\_\_  
Louise C. Porter  
Special Counsel

cc: Docket No. 7970 Service List

PSB Docket Nos. 7970 - SERVICE LIST

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